

**Planning Commissioner's Written Comments  
February 15, 2015**

**Magnolia Grill (Z1400024)**

**BUZBY** – See Case A1400008

**DAVIS** – I vote approval.

**GIBBS** – Approved request. Amendment to limit hours of operation of outdoor area to 9 or 10. The outdoor seating addition request, music, etc. for existing grille was approved with suggestions on limiting hours of operation or playing music on this exterior seating area. (Which I voted to support). Generally, asking business to limit their "services" would seem to affect their plans for increasing customers... and profitability options. But this particular business is a "good neighbor" in this case. I wanted to ask, and should have, if existing ordinances on excessive noise, lighting, etc. would apply to this "mixed use" area. This question may come up more and more as more compact neighborhoods are built both in existing areas and the areas around new transit stops. My understanding is that new compact neighborhoods are encouraged if not req'd to be mixed-use developments. I think some mechanism, coordination with ordinances will need to be part of the planning to lessen the need for special considerations at each development. Although there will undoubtedly be special situations warranting such. Just a thought

**HARRIS** – For with limited operations to be 7am to 9pm but no later than 10pm.

**HOLLINGSWORTH** – Approve with the commitment of restricted outdoor hours.

**HUFF** – With the addition of a commitment to limit outdoor hours of operation, this seems like a good rezoning.

**MILLER** - I urge the city council to approve this plan amendment and zone change on condition that the developer include within the text commitments of the development plan a provision that will limit the hours of operation for outdoor seating to 9 p.m. preferably, but in any case, not later than 10 p.m.

I completely disagree with the city staff's reasons for supporting this plan and zone change. The staff cites as justification for the change the expanding Ninth Street commercial area and the desirability of having commercial uses at intersections. Neither of these are justifications for changing the comprehensive plan or the zoning in this case. The property in question was developed in the 1920s before zoning was applied to west Durham. It was a time when few people had automobiles or adequate in-home food storage. It was a public necessity to locate small grocery stores in residential districts. Over time conditions changed and the need for small islands of commercial uses in residential areas not only became unnecessary, it became undesirable. This store remained, however, and when zoning was applied to the area, these two lots were marked as commercial and have remained that way. The property is not part of the Ninth Street commercial district. It is still an island in a residential neighborhood. The neighborhood, Old West Durham, is an important inner-city neighborhood and a source of

medium to high density affordable housing near a proposed transit stop. When we converted the Ninth Street compact neighborhood tier to a design district we created a regulatory environment that has stimulated significant redevelopment in the design district on a scale that is not compatible with the Old West Durham neighborhood. Fortunately, Green Street, with its institutional uses, utility rights of way, and environmentally sensitive undeveloped areas, makes a logical and effective boundary between the redeveloped business area to the south and the historic neighborhood to the north. We must hold this Green Street line and not allow land north of it to be used for commercial expansion. I am disappointed in the staff's failure to recognize this policy imperative in its discussion of these cases.

A better justification for the plan amendment and rezoning is the exceptional situation of this property and its historical development. Since we are not going to downzone the property to make it single-family, we should approve the smallest necessary adjustments to permit it to continue to function as a residentially oriented business under modern conditions. The historic grocery store building is located only one foot from the northern property line. This does not allow space for the buffers that are now required between neighborhood commercial and residential properties. Allowing the comprehensive plan to be amended to include the one neighboring lot in the small commercial area will allow for the installation of the needed buffer. It would not be appropriate, however, to permit this lot to be used for the expansion of the building. The development plan submitted by the developer includes such a commitment. The building may not be expanded on to this lot. I have some misgivings about allowing the lot to be used for even limited parking, but given that parking for the business is an issue with residential neighbors and the fact that the Old West Durham Neighborhood Association has considered this issue and approves the development plan, I will support it. I am grateful to the developer for proffering an additional commitment to limit the hours of operation for outdoor seating at the site. At our hearing, Mr. Horvath said he was confident that his clients (who were not present) would agree to a 10 p.m. limit. He said that he believed they might agree to a 9 p.m. limit. Nine o'clock will mesh with the current business's hours and would be preferable to the nearby residential neighbors. I urge the council to approve this plan amendment and zone change only on condition that the hours of operation for the outdoor seating are limited.

This part of Ninth Street is undergoing considerable redevelopment, but not for commercial uses. New residential structures have replaced older ones and many older residential buildings have been restored. This is the redevelopment that should be encouraged north of Green Street. With exception of this Magnolia property and its unique circumstances, expansion of non-residential uses north of Green Street in this area should not be allowed.

**PADGETT** – Approve.

**WINDERS** – This commercial use is causing parking problems for residential neighbors. Outdoor seating may generate noise. Restriction outdoor business hours to 9-10 is essential (Indoor Business may continue later).